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PTO/SB/64 (09-04)  
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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

0316

First named inventor: DANIEL D. EVANS

Application No.: 10/651,228

Art Unit: 3673

Filed: 08/29/2003

Examiner: KATHERINE W. MITCHELL

Title: CONDUIT RETAINER APPARATUS

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

☒ Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form of ELECTION & AMENDMENT A (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_.

- ☐ has been paid previously on \_\_\_\_\_.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

H. Gordon Shields

Signature

6-10-05

Date

H. JORDON SHIELDS

Typed or printed name

7830 NORTH 23RD AVENUE

Address

PHOENIX AZ 85021

Address

23,099

Registration Number, if applicable

602-997-4979

Telephone Number

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☐ Other: \_\_\_\_\_

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

6-10-05

Date

H. Gordon Shields

Signature

H. GORDON SHIELDS

Typed or printed name of person signing certificate

## STATEMENT

By way of introductory material, in the latter part of 2003, I moved from my office in contemplation of retirement and moved my work area to my home. However, I continue to use my office address for all correspondence, and I still meet clients there. I go to the office several times a week to pick up my mail. Whether this had any impact on this matter I do not know.

I, the undersigned attorney of record for this application, was contacted by telephone by Examiner Mitchell on or about the 15<sup>th</sup>, or 16<sup>th</sup> or 17<sup>th</sup> of November, 2004, regarding a restriction requirement for an election of species. On or about November 19<sup>th</sup>, after contacting the inventor, I called Examiner Mitchell with the election, but she stated that she had prepared a written action. The matter of the election and the application in general was discussed, and the Examiner faxed some explanatory material to the undersigned. The faxed material is the basis of the Election and Amendment A accompanying this Petition. I very much appreciate the help of Examiner Mitchell in this matter.

When the written action did not arrive in the next week or so, the file wrapper was appropriately filed in a file cabinet, awaiting the written action. Unfortunately, no tickler file regarding the application was made.

I have no recollection of ever receiving the action which the Examiner states was mailed on November 24, 2004. No entry was made on the file wrapper of the receipt of an action, and no entry was made on a due date file which is customarily done immediately upon the receipt of an action.

Examiner Mitchell called me Monday evening, June 6<sup>th</sup>, notifying me that no response was made to the action she said was mailed November 24<sup>th</sup>, 2004, and accordingly the application is deemed abandoned.. I repeated the facts stated above regarding no receipt of the action. She read the address to which the action was mailed, and I stated that the address was correct. I advised her of the facts recited in the first paragraph, above and further stated that I would file a Petition to Revive. Examiner Mitchell has been most helpful in this matter, and I sincerely appreciate her help and suggestions.

There was never an intention to let this application go abandoned. It is believed that the claimed subject matter clearly defines over the art of record and is accordingly allowable. If the Examiner would prefer other language than that presently in the claims, I'm certain that appropriate language may be agreed upon in order to provide allowable claims. However, since I do not have the written action, I am not aware of any cited art other than the two references faxed to me by the Examiner on November 19<sup>th</sup>, as stated above. This has also been stated in the REMARKS portion of the accompanying Election and Amendment A. If the Amendment is incomplete, I will quickly and diligently file an appropriate response.

What happened to the missing action is not known. I do not have it, or at least it is not where it ought to be in the file. Whether it was delivered to my office address or not, or got mixed up in Thanksgiving mail, I do not know. In my nearly forty years experience, there have been a few times that correspondence from the Patent Office was lost in the mail, but the effects have always been appropriately minimized without an abandonment. Unfortunately, the holiday seasons at the end of

the year and other matters occupied my mind and I did not follow up on this matter. Again, at no time has it been intended to abandon the application. It is respectfully submitted that the application was unintentionally abandoned, and it is respectfully requested that this Petition to Revive be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. Gordon Shields', written in a cursive style.

H. Gordon Shields, Attorney of record

HGS:sf